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May 22, 1998

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554


RE: Comments in WT Docket No. 98-20

Dear Ms. Salas:

On behalf of Affiliated American Railroads (hereinafter the "railroad industry"), and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, enclosed herewith for filing are an original and five (5) copies of the railroad industry's Comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.

Kindly stamp and return to this office the enclosed copy of this filing designated for that purpose. You may direct any questions concerning this material to the undersigned.

Respectfully submitted,


Lisa M. Higginbotham

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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OFFICE OF THE SECRETARY

In the Matter of)	
)	
Biennial Regulatory Review -- Amendment)	WT Docket No. 98-20
of Parts 0, 1, 13, 22, 24, 26, 27, 80,)	
87, 90, 95, 97, and 101 of the Commission's)	
Rules to Facilitate the Development and Use)	
of the Universal Licensing System in the)	
Wireless Telecommunications Services)	

**COMMENTS OF
AFFILIATED AMERICAN RAILROADS**

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May 22, 1998

SUMMARY

The Affiliated American Railroads support the Commission's efforts to streamline its application rules and forms in order to facilitate implementation of the Universal Licensing System (ULS). Licensing via the ULS system will provide applicants with a quicker and less costly means to file wireless radio applications and ensure speedier access to accurate application and licensing information by the public.

The railroad industry, however, strongly urges the Commission to take steps to ensure that its consolidation and streamlining efforts do not result in the creation of unnecessary and unduly burdensome requirements on private wireless radio applicants. For example, the railroads strongly object to the proposed requirement that private wireless applicants file the FCC Form 602. This form, as proposed in the Notice would impose new unnecessary and burdensome reporting requirements on private wireless applicants. Moreover, the Commission should clarify that private wireless applicants will not be required to provide alien ownership information other than the foreign government information that is currently required. The proposed forms, if adopted, would require all applicants to provide all alien ownership information. Such a requirement would represent another new unnecessary and unduly burdensome requirement on private wireless applicants.

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of the Universal Licensing System in the)	
Wireless Telecommunications Bureau)	

**COMMENTS OF
AFFILIATED AMERICAN RAILROADS**

The Affiliated American Railroads, by their undersigned counsel, hereby file their comments pursuant to Section 1.415 of the Commission's Rules and Regulations,¹ in response to the Commission's Notice of Proposed Rulemaking which proposed numerous rule changes to implement the Universal Licensing System (ULS).²

In its Notice, the Commission proposed, inter alia, certain conforming changes to the wireless licensing rules to reflect new electronic filing procedures, new electronic forms and other technical changes in the licensing process. In addition, the Commission proposed to consolidate its licensing rules for all wireless radio services and, to the extent possible, eliminate duplicative service-specific rules.

¹ 47 C.F.R. § 1.415.

² Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing system in the Wireless Telecommunications Services, WT Docket No. 98-20, Notice of Proposed Rulemaking, FCC 98-25 (released March 18, 1998) ("Notice"). On May 4, 1998, the Commission issued an order extending the deadline for initial comments until May 22, 1998. Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, WT Docket No. 98-20, Order, DA 98-827 (released May 4, 1998).

I. INTRODUCTION

The U.S. railroad industry collectively holds licenses for approximately 14,000 base stations in the land mobile service and several thousand licenses in the fixed microwave service. Accordingly, the industry has a significant interest in this proceeding,

The Commission is to be commended for its efforts to establish a streamlined approach to its licensing process through establishment of the ULS. Licensing via the ULS will allow wireless radio applicants to save time and money by filing applications electronically. This, in turn, should result in speedier processing of such applications by the Commission staff.

In addition, the railroads support the Commission's efforts to revise and consolidate its application forms in an effort to facilitate electronic filing. The railroads, however, strongly urge the Commission to take steps to ensure that its efforts do not result in the creation of unnecessary and unduly burdensome reporting requirements on private wireless applicants.

II. ELECTRONIC FILING AND NEW FORMS

A. Consolidation of the Commission's Current 41 Licensing Forms Would Serve the Public Interest.

In its Notice, the Commission proposed to consolidate over 40 license

application forms into five.³ The railroads support this proposal as it would save applicants time and money in providing applicant information to the Commission.

B. Mandatory Electronic Filing Would Provide Public Interest Benefits.

In its Notice, the Commission proposed that beginning on January 1, 1999, applicants, licensees, and frequency coordinators in all wireless radio services would be required to file applications electronically.⁴

The railroad industry does not object to this proposal so long as the Commission takes steps to ensure that the ULS system works with respect to the filing and processing of private wireless applications. In this regard, the Commission, however, must recognize that there must be more than one mandated transfer mode for filing applications. In addition, the Commission should work with industry to develop the best electronic solutions to any problems with the ULS system.

Mandatory electronic filing should allow applicants a quicker and less costly means to file applications which should, in turn, result in quicker and more accurate processing by the Commission staff. In addition, mandatory electronic filing would result in speedier access to application and licensing information by the public.

³ Notice, at ¶ 16-18.

⁴ Id., at ¶ 21.

C. The Commission Should Permit Electronic Filing of Pleadings Associated With Applications.

In its Notice, the Commission proposed to adopt a rule allowing electronic filing of pleadings regarding wireless radio service applications.⁵ Electronic filing of application-related pleadings will result in speedier and less costly filings by interested parties wishing to file petitions or other pleadings regarding a specific application. Moreover, electronic filing would allow for better and more timely access to these pleadings by the public.

The Commission also sought comment on whether it should permit other WTB pleadings that are not associated with an application or a docketed proceeding to be filed electronically via ULS.⁶ The railroads support this proposal; however, as proposed for pleadings associated with applications, paper copies of these pleadings should also be served on interested parties, if any.

III. STANDARDIZATION OF PRACTICES AND PROCEDURES FOR WTB APPLICATIONS AND AUTHORIZATIONS.

A. The Commission Should Only Require Necessary Information From Private Wireless Radio Applicants.

As an initial matter, the railroads note that the Commission's Notice appears to contain inconsistencies concerning its proposal regarding ownership reporting

⁵ Id., at ¶ 27.

⁶ Id.

requirements for private wireless applicants. The proposed rule set forth in the Notice provides that with limited exceptions (not including non-governmental private wireless entities), "for non-auctionable licenses and applications, the applicant or licensee must disclose fully the real party (or parties) of interest, including (as required) a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant or licensee."⁷

In contrast, the instructions to the FCC Form 602 accompanying the Notice, state that the form is required to be filed by applicants who (1) have acquired their license via an auction; (2) applied for a license in a service subject to competitive bidding; or (3) are common carriers. Moreover, the description of the proposed FCC Form 602 contained in the Paperwork Reduction Act section of the Notice's Federal Register summary also lists these entities as the only ones required to file the FCC Form 602.⁸

A further inconsistency may be found in the Regulatory Flexibility Act section of the Notice, which states that private mobile radio service licensees will be required merely to certify their status with respect to foreign government ownership or ownership

⁷ Id. at Appendix C, p. C-16 (proposed Section 1.919(e)(2)).

⁸ Id. at Appendix A, proposed FCC Form 602, p. 2. See also, Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, 63 Fed. Reg. 16938, 16954 (1998).

by a representative of a foreign government each time they submit a Form 601.⁹ This statement suggests that under the Commission's proposal, private wireless applicants would be required only to certify to the foreign government ownership question and not to provide "real party in interest" or other ownership information or file the FCC Form 602.

1. Private Wireless Applicants Should Not Be Required to File the FCC Form 602.

The railroads strongly object to any proposal to require private wireless applicants to file FCC Form 602, or otherwise to provide ownership information which is currently not required. The FCC Form 602, as proposed in the Notice, would require information regarding inter alia, : (1) the type of interest held by the "disclosable interest holder;" (2) the type of entity; (3) the ownership interest held by the "disclosable interest;" and (4) where the interest holder holds an indirect ownership interest in the applicant, a list of entities in the ownership path. In addition to this information, the form would require, for the applicant, and for each officer, director, attributable stockholder, or key management personnel having a disclosable interest, a list of any FCC -regulated business 10 percent or more whose stock, warrants, options or debt securities are owned by such person or entity. Provision of this information is not statutorily required and would create an unnecessary and undue burden on private

⁹ Notice, at Appendix P, p. P-12 (Accord Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20, Erratum, (released April 29, 1998).

wireless applicants who would be required to provide and continuously update this information each time changes occurred.¹⁰

In addition, much of the information collected on the proposed FCC Form 602 is based on ownership reporting requirements adopted by the Commission for auctionable services and designed to monitor compliance with certain auction-related rules.¹¹ Because these rules do not apply to private wireless services, such detailed ownership information is not necessary for these services.

In its Notice, the Commission sought comment on whether additional ownership information should be collected from railroads and other commercial enterprises holding licenses in the private, non-auctionable services.¹²

The railroads object to the notion that railroad companies should be subject to additional or different reporting requirements than other private wireless applicants merely because they are "commercial entities." Railroad companies do not use their licenses to provide commercial communications services and, therefore, do not

¹⁰ The questions set forth in the proposed FCC Form 602 only exacerbate the inconsistencies noted above regarding the Commission's proposal. In the Notice, the Commission stated that it was not proposing to alter the substance of the ownership reporting requirements for non-auctionable services at this time. Notice, at ¶ 47. However, the proposed FCC Form 602, if adopted in its current form, would certainly represent a change in substance in the ownership reporting requirements for private wireless applicants.

¹¹ See Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, WT Docket No. 97-82, Third Report and Order and Second Notice of Proposed Rule Making, FCC 97-413, ¶¶ 71-78 (released December 31, 1997).

¹² The Commission stated that in some instances, these types of commercial entities could also hold licenses or interests in licenses in auctionable wireless services. Accordingly, the Commission questioned whether the possible holding of both types of licenses raised potential competitive or spectrum management issues that would justify requiring such entities to provide ownership information in connection with applications for non-auctionable as well as auctionable services. Notice, at ¶ 48.

compete with commercial service providers. Rather, as portrayed schematically in the attached diagram (Attachment A), they use their licenses to support railroad safety and operations, including transmission of voice communications between dispatchers at centralized control stations and railroad crews in locomotives, and data communications for controlling and monitoring rail switches and signals throughout the rail network. Consequently there are no "competitive or spectrum management issues" that would justify subjecting the railroad industry to the same type of ownership reporting requirements imposed on entities holding auctionable licenses.

2. Private Wireless Applicants Should Not Be Required to Provide Unnecessary Alien Ownership Information.

In the Notice, the Commission proposed to require non-auctionable service applicants to certify that they were not representatives of foreign governments.¹³ Such a requirement is appropriate and necessary because it tracks Section 310(a) of the Communications Act,¹⁴ which prohibits foreign governments or their representatives from holding any station license. However, the proposed FCC Forms 601, 603, and 604, appear to require all applicants, both commercial and private, to provide information regarding all aspects of alien ownership, i.e., those questions pertaining to Section 310(b) of the Communications Act,¹⁵ which are applicable to only four types of

¹³ Id. at 47.

¹⁴ 47 U.S.C. § 310(a).

¹⁵ 47 U.S.C. § 310(b)

licenses, i.e., broadcast, common carrier, aeronautical en route, and aeronautical fixed.

Specifically, the proposed FCC Form 601 requests "yes" or "no" answers as to whether (1) the applicant is a foreign government or the representative of any foreign government; (2) the applicant is an alien or the representative of an alien; (3) the applicant is a corporation organized under the laws of any foreign government; (4) the applicant is a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country; or (5) the applicant is directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of the foreign country.¹⁶

If answering "yes" to any of these questions, the applicant must attach an exhibit explaining the circumstances.¹⁷ The instructions to the FCC Form 601 require the applicant to answer all of the questions.¹⁸ Thus, the proposed form, if adopted, would require private wireless applicants to provide responses to each of the alien ownership questions and, where the response to a question is "yes," attach an exhibit explaining the circumstances.

¹⁶ Notice, at Appendix A, FCC Form 601, Main Form, page 2.

¹⁷ Id.

¹⁸ Id., at Appendix A, Information and Instructions FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, FCC 601, page 10.

The railroads object to this new and unnecessary reporting requirement. Except for the first question, the Commission's current applications for land mobile (FCC Form 600) and fixed microwave service (FCC Form 415) explicitly provide that private wireless applicants are not required to answer these questions.¹⁹ These latter questions implement 47 U.S.C. § 310(b) which explicitly applies only to broadcast, common carrier, aeronautical en route and aeronautical fixed licenses. In summary, except for the foreign government question, there is no need to require private wireless applicants to answer any of the other alien ownership questions. The railroads urge the Commission to clarify this in its consolidated rules, the instructions to these forms, and on the ULS system.

B. The Commission Should Adopt the Least Burdensome Approach to Requiring Notifications of Consummation of Assignments and Transfers of Control.

In the Notice, the Commission proposed requiring assignment and transfer of control applicants to notify the Commission when consummation of their transactions has occurred. This notification would be the trigger by which the Commission would

¹⁹ Instructions to the FCC Form 415 explicitly state that all applicants must answer the foreign government question (first question listed) while only common carrier applicants must answer the remaining alien ownership questions. See Information and Instructions Application for Authorization in the Microwave Services (Parts 74 and 101), page 4 (Questions 51-55). The instructions to the FCC Form 600 state that Item 29 (the foreign government question) must be answered either "Y" or "N;" however, Items 30-33 (the remaining alien ownership questions) "must be answered on applications for authority to provide commercial mobile service, but may be omitted on other applications." Information and Instructions Application for Mobile Radio Service Authorization or Rural Radiotelephone Service Authorization, page 4. Although the instructions to the proposed forms state that an application for commercial service can not be granted if the remaining questions are answered "Yes," they do not explicitly state that a private wireless applicant need not answer these questions.

modify its database to reflect grant of the assignment or transfer of control. The railroads support this proposal and urge the Commission to revise its proposed FCC Forms 603 and 604 accordingly. The instructions to both of these forms, as proposed, would require an applicant to file the main form of FCC Form 601 along with Schedule K on which wireless licensees would notify the Commission that consummation of the assignment or transfer of control has occurred.

IV. CONCLUSION

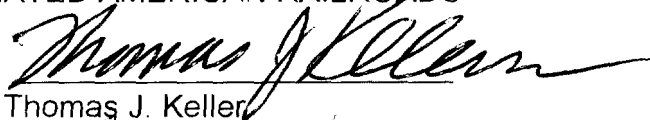
Although the Commission's efforts to streamline its wireless application process should be commended, the railroads urge the Commission to take steps to ensure that, in consolidating and revising its application processing rules and forms, it does not impose unnecessary ownership reporting requirements on private wireless applicants. Specifically, the railroads strongly object to the proposed requirement that private wireless applicants file the proposed FCC form 602. Such a reporting requirement presents an unnecessary burden on private wireless applicants. Moreover, there is no reason to require private wireless applicants to provide alien ownership information

beyond that required to assure compliance with Section 310(a) of the Communications Act.

Respectfully submitted:

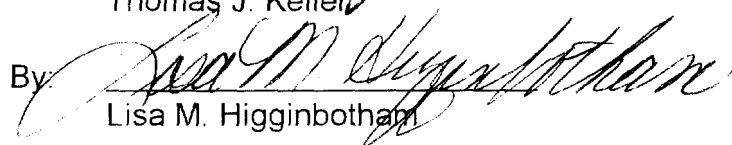
AFFILIATED AMERICAN RAILROADS

By:



Thomas J. Keller

By:



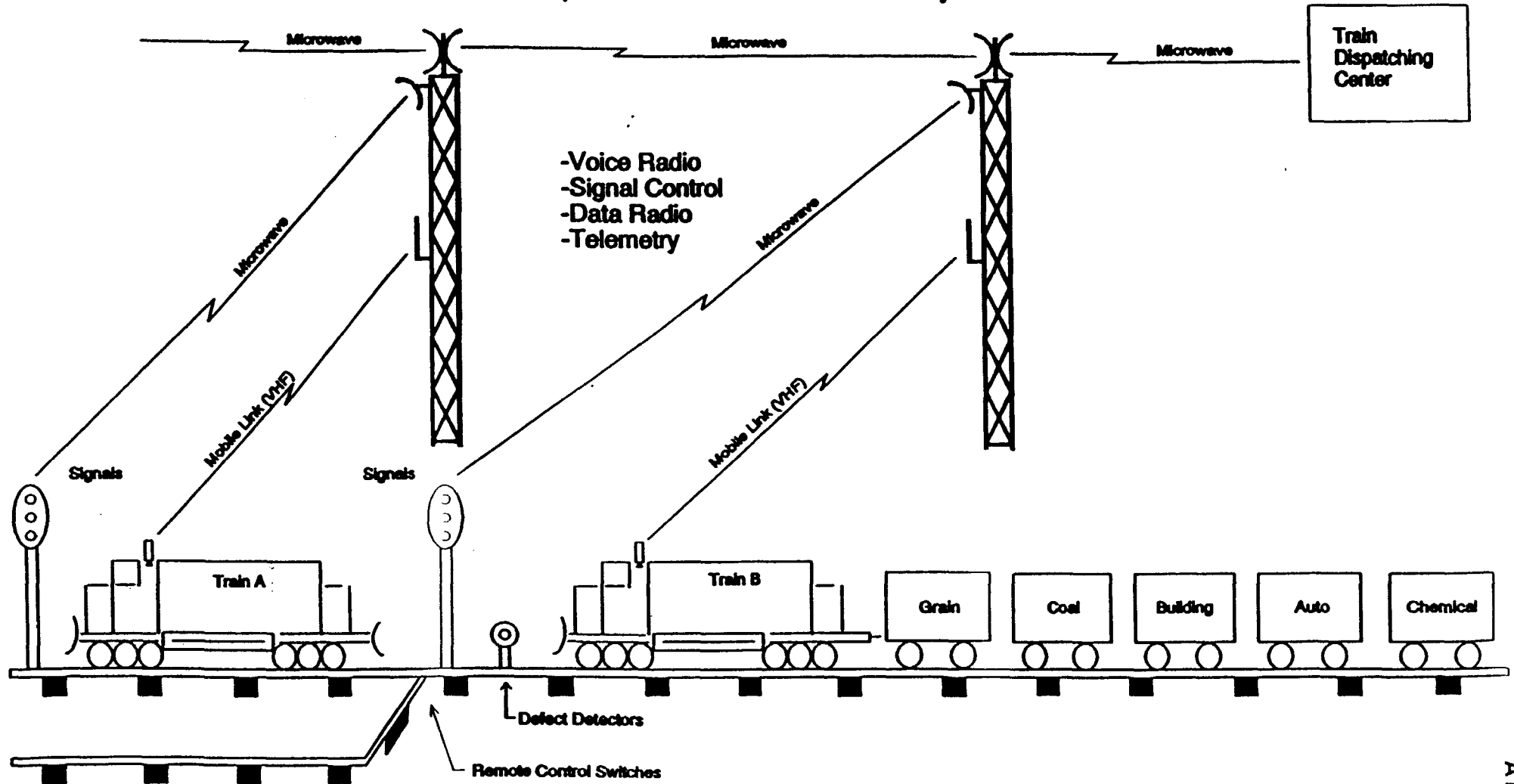
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May 22, 1998

Railroad Radio Systems

-are essential for safe, reliable, efficient rail transportation to interconnect train control systems.



Railroad freight transportation is critical to U.S. economy.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of May, 1998, I caused copies of the foregoing document to be served by hand-delivery to the following:

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